

REMARKS

Applicants have proposed amending claim 1 to include recitations of claim 43, which Applicants have proposed canceling without prejudice or disclaimer. Since the proposed amendment to claim 1 merely adds language to claim 1 that was previously recited in claim 43, and since claim 43 depended directly from claim 1, the present amendment does not raise any new issues or necessitate any further consideration. Accordingly, this amendment should be entered, placing the present application in condition for allowance (or in better form for an appeal). Upon entry of this amendment, claims 1-42 and 44 will be pending.

As an initial matter, Applicants wish to thank the Examiner for indicating that claims 7, 19, and 31 would be allowable if rewritten in independent form.

Applicants note that the final Office Action does not appear to provide any response to several remarks set forth in the previously filed Response to Office Action dated January 11, 2007 ("previously filed Response"), including Applicants' remarks relating to a Section 103(a) rejection of claims 37 and 41 that the Examiner maintained in the most-recent Office Action of August 1, 2007. (See the previously filed Response at pgs. 2-5.) As set forth in M.P.E.P. § 707.07(f), "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of applicant's argument and answer the substance of it." Since the final Office Action does not answer any of Applicants' arguments relating to the claim rejection that has been maintained, Applicants respectfully submit that the finality of the office action should be withdrawn and that Applicants should be provided with a full answer to all of Applicants' remarks.

In the final Office Action, claims 1-4, 8-11, 25-28, and 32-35 were rejected under 35 U.S.C. § 103(a) based on U.S. Patent No. 6,857,432 to de Laforcade (“de Laforcade”). Independent claims 1 and 25 are the only independent claims rejected under Section 103(a) based on de Laforcade.

In the interest of advancing prosecution, Applicants have proposed amending independent claim 1 to incorporate subject matter previously recited in claim 43. Applicants respectfully submit that the Section 103(a) rejection of claim 1 should be withdrawn because the de Laforcade reference does not disclose or suggest a device including, among other features, “at least one first magnet associated with [a] base and at least one second magnet associated with [a] cover, the first and second magnets coupling the base and the cover together so as to permit movement of the cover with respect to the base, in a generally hinge-like manner, between a closed position . . . and an open position . . . , wherein the first and second magnets couple the base and the cover together when the cover is in the open position,” as recited in amended claim 1.

Claim 43, which previously recited the feature of “first and second magnets coupl[ing] the base and the cover together when the cover is in the open position,” was not rejected under 35 U.S.C. § 103(a) based on de Laforcade alone. Accordingly, Applicants’ proposed amendment of claim 1 to include these recitations of claim 43 should obviate the rejection of claim 1 under 35 U.S.C. § 103(a) based on de Laforcade alone.

The de Laforcade reference discloses a flexible closure mechanism 122 that extends from a base 104 and includes a snap 124 that fastens to a corresponding snap component 125 on a cover 102 “when cover 102 is in a closed position” in which the

cover 102 covers the base 104 to limit access to cosmetic powder cakes 106 and 108, as shown in Figs. 1 and 5B. Col. 3, lines 13-17. There is no fastening of the snap 124 and the snap component 125, however, when the cover 102 is opened, for example, as shown in Fig. 3. Indeed, the snap 124 and the snap component 125 appear to be positioned a substantial distance apart from one another when the cover 102 is in the exemplary open arrangement of Fig. 3.

Even though the de Laforcade reference at col. 3, lines 26-27 does generally mention that the closure mechanisms may include any type of fastening device including magnets, there is no disclosure or suggestion of the recited configuration including first and second magnets coupling a base and a cover together when the cover is in an open position. For example, even if the de Laforcade disclosure at col. 3, lines 26-27 were to be interpreted as referring to a magnet for the closure mechanism 122, there is no disclosure or suggestion of both a “first magnet” and a “second magnet” and, more importantly, no disclosure or suggestion of a configuration in which “first and second magnets couple [a] base and [a] cover together when [a] cover is in [an] open position,” as recited in claim 1 as amended.

Independent claim 25 also should be allowable over de Laforcade. Applicants respectfully submit that the Section 103(a) rejection of claim 25 should be withdrawn because de Laforcade does not disclose or suggest a device including, among other features, “a base [that] comprises a first member and a second member, wherein the first and second members comprise magnets coupling the first and second members together with one of the members being stacked on the other member; and a cover . . .

[that] is movable with respect to the base, in a generally hinge-like manner, between a closed position . . . and an open position,” as recited in claim 25.

Contrary to the assertions in the final Office Action at p. 2, reference numeral 104 of de Laforcade does not correspond to the base recited in claim 25. More specifically, the base 104 of de Laforcade does not include “a first member and a second member . . . compris[ing] magnets coupling the first and second members together with one of the members being stacked on the other member,” as recited in claim 25. Rather than disclosing the recited combination of a cover and a base that includes first and second members coupled together via magnets, de Laforcade merely discloses a cover 102 and a base 104 that lacks “a first member and a second member . . . compris[ing] magnets coupling the first and second members together with one of the members being stacked on the other member,” as recited in claim 25.

Moreover, the Section 103(a) rejection based on de Laforcade should be withdrawn because there are several additional reasons why the final Office Action does not set forth a *prima facie* case of obviousness. For example, even though the final Office Action acknowledges that de Laforcade does not disclose numerous features such as first and second magnets, a maximum angular extent, and first and second pairs of magnets, the final Office Action merely alleges that such features would have been obvious without citing any evidence. Final Office Action at pgs. 2-3. Thus, rather than providing anything resembling a *prima facie* case of obviousness, the final Office Action rejects the claims in a conclusory, hindsight fashion and improperly attempts to shift the burden over to Applicants to show non-obviousness. Furthermore, contrary to the apparent assertions in the Office Action at p. 3, the de Laforcade reference does not

disclose “general conditions” of the claims and *In re Aller*, 105 U.S.P.Q. 233, does not provide any support for the claim rejection.

For at least these reasons, Applicants respectfully submit that the Section 103(a) rejection of independent claims 1 and 25 should be withdrawn. Claims 2-4, 8-11, 26-28, and 32-35 depend from one of claims 1 and 25 and, thus, those dependent claims should be allowable for at least the same reasons as the respective claim(s) from which they depend.

In the final Office Action, claims 37 and 41 were rejected under 35 U.S.C. § 103(a) based on International Application No. WO 90/15215 to Jeong (“Jeong”) in view of U.S. Patent No. 2,302,661 to Benson (“Benson”).

Applicants respectfully submit that the Section 103(a) rejection based on Jeong and Benson should be withdrawn because the final Office Action does not set forth a *prima facie* case of obviousness. One of ordinary skill in the art would not have had any reason to combine features of Jeong and Benson, and even if there were to be a reason (a notion that Applicants dispute), any attempted combination of subject matter disclosed in the references would not satisfy all of the recitations in claim 37. As apparently acknowledged in the final Office Action at p. 3, Jeong does not disclose, *inter alia*, a device “configured so that [an] end portion of [a] cover opening limiter moves into [a] base recess when [a] cover is moved from [an] open position to [a] closed position,” as recited in claim 37. Benson does not provide any disclosure that would remedy that deficiency.

Jeong relates to an article, such as a jewelry box, that has an integrally formed hinge. Benson, on the other hand, concerns a hinge structure associated with recessed

lighting that is secured to a building structure. See, e.g., p. 1, left col., lines 34-40.

Contrary to the obviousness assertion in the final Office Action, one of ordinary skill in the art would not have had any reason to modify Jeong's jewelry box hinge with any feature of Benson's recessed lighting hinge, because jewelry boxes and recessed lighting are completely different fields of art.

In addition, absolutely nothing supports the assertion in the final Office Action at p. 4 that "[i]t would have been obvious . . . to construct the hinge as taught by Benson in place of the hinge shown by Jeong, as these two hinges are [purportedly] equivalent and [purportedly] would result [sic] an equivalent effect." Contrary to this assertion, Jeong and Benson do not disclose hinges that are equivalent to one another and they do not provide any equivalent results. Jeong discloses a spring 90 that has one end secured to a jewelry box body 30 and another end secured to a jewelry box cover 20 to ensure resilient opening and closing of a jewelry box, while keeping the body 30 and cover 20 connected together. See, e.g., Jeong at page 3, lines 11 and 22-25, and page 4, lines 10-13. In contrast, Benson discloses a recessed lighting hinge having an unsecured portion 44 that moves in a space defined by inner wall surfaces 37 and 40, while permitting hinge parts to be separated from one another by a simple relative movement of parts (p. 1, left col., lines 5-9 and right col., lines 37-39). Benson lacks any spring or other structure providing a biased opening and closing, and, rather than keeping a box body and cover connected together, Benson's hinge is designed to permit hinge parts to be separated in a simple manner. Accordingly, Jeong and Benson do not disclose equivalent hinges and there would have been no reason for one of

ordinary skill in the art to substitute Benson's recessed lighting hinge in place of Jeong's jewelry box spring.

Moreover, one of ordinary skill in the art would not have had any legitimate reason to modify Jeong's hinge to include any portion of Benson's hinge. For example, contrary to the apparent assertions in the final Office Action, one of ordinary skill in the art would not have had any suggestion or motivation to substitute Benson's arcuate hinge portion 44 in place of the C-shaped plate spring 90 disclosed in Jeong because such a modification would destroy the principle of operation of Jeong's hinge. Jeong discloses that "two ends of the spring 90 [are] engaged with the holes 39 and 29 provided in [a] body 30 and [a] cover [20] respectively" to ensure resilient opening and closing of a box (Jeong at page 3, lines 11 and 22-25, and page 4, lines 10-13). One of ordinary skill in the art would not have modified Jeong's spring 90 to permit it to move into, and out of, either of the holes 39 and 29 because such a hypothetical modification would destroy the operational principles of Jeong's hinge, which has the spring 90 ensure resilient opening and closing of a box by maintaining engagement of ends of the spring 90 within the holes 39 and 29. In other words, the hypothetical modification of Jeong's hinge would destroy the disclosed operational principles of Jeong's hinge. Consequently, nothing supports the modification/combination of references as proposed in the final Office Action.

For at least these reasons, there is no *prima facie* case of obviousness and independent claim 37 is allowable over Jeong. Claim 41 depends from claim 37 and, thus, should be allowable for at least the same reasons claim 37 is allowable. Moreover, claim 41 should be allowable because neither one of the references cited in

the claim rejection discloses or suggests a cover opening limiter including an axle, as recited in claim 41.

In the final Office Action at pgs. 4-5, claims 5, 6, 12-18, 20-24, 29, 30, 37-40, and 42-44 were rejected under 35 U.S.C. § 103(a) based on de Laforcade in view of Jeong.

Claims 12 and 37 are the only independent claims included in the Section 103(a) rejection based on de Laforcade in view of Jeong. The following explains why those claims are allowable over the proposed combination of references. In addition, since claim 1 has been amended to incorporate the recitations of claim 43, the allowability of claim 1 is also addressed.

Claim 1, as amended, recites a device including, among other features, “at least one first magnet associated with [a] base and at least one second magnet associated with [a] cover, the first and second magnets coupling the base and the cover together so as to permit movement of the cover with respect to the base, in a generally hinge-like manner, between a closed position . . . and an open position . . . , wherein the first and second magnets couple the base and the cover together when the cover is in the open position.” As explained in the above discussion of why the Section 103(a) rejection of claim 1 should be withdrawn, de Laforcade lacks any disclosure or suggestion of these recited features. Jeong does not remedy any of these deficiencies. For example, Jeong lacks any disclosure of first and second magnets or first and second magnets that couple a base and cover together when a cover is in an open position. Consequently, claim 1 should be allowable over the proposed combination of de Laforcade and Jeong.

Regarding claim 12, Applicants respectfully submit that the Section 103(a) rejection of this claim should be withdrawn because neither de Laforcade nor Jeong, nor any combination thereof, discloses or suggests “first and second magnets coupling [a] base and [a] cover together so as to permit movement of the cover with respect to the base, in a generally hinge-like manner, between a closed position . . . and an open position . . . , . . . wherein the first and second magnets couple the base and the cover together during the generally hinge-like movement of the cover between the open position and the closed position.”

As explained above, the de Laforcade reference discloses a flexible closure mechanism 122 that extends from a base 104 and includes a snap 124 that fastens to a corresponding snap component 125 on a cover 102 “when cover 102 is in a closed position” in which the cover 102 covers the base 104 to limit access to cosmetic powder cakes 106 and 108, as shown in Figs. 1 and 5B. Col. 3, lines 13-17. There is no fastening of the snap 124 and the snap component 125, however, during any opening or closing movement of the cover 102.

Even though the de Laforcade reference at col. 3, lines 26-27 does generally mention that the closure mechanisms may include any type of fastening device including magnets, there is no disclosure of the recited configuration including first and second magnets that couple a base and a cover together during the generally hinge-like movement of the cover between an open position and a closed position. For example, even if the de Laforcade disclosure at col. 3, lines 26-27 were to be interpreted as referring to a magnet for the closure mechanism 122, there is no disclosure of both first and second magnets and, more importantly, no disclosure of a configuration in which

first and second magnets couple a base and a cover together during the generally hinge-like movement of the cover between the open position and the closed position, as recited in claims 12.

Turning to independent claim 37, neither de Laforcade nor Jeong, nor any combination thereof, discloses or suggests a device “configured so that [an] end portion of [a] cover opening limiter moves into [a] base recess when [a] cover is moved from [an] open position to [a] closed position,” as recited in claim 37. The final Office Action at p. 3 acknowledges that Jeong does not disclose this recited subject matter.

Moreover, de Laforcade also does not disclose or suggest this feature and the final Office Action does not appear to allege otherwise. Accordingly, Applicants respectfully submit that the Section 103(a) rejection of claim 37 based on the combination of de Laforcade and Jeong should be withdrawn.

For at least these reasons, claims 1, 12, and 37 should be allowable over the Examiner’s proposed combination of de Laforcade and Jeong. Further, the Section 103(a) rejection of claims 5, 6, 13-18, 20-24, 29, 30, 38-40, and 42-44, which depend from one of claims 1, 12, 25, and 37, should be allowable for at least the same reasons as the respective claim(s) from which they depend.

In view of at least the reasons explained above, all of the claim rejections should no longer be applicable and all of the pending claims should be allowable. If the Examiner believes a telephone conversation or interview might advance prosecution, the Examiner is invited to call Applicants’ undersigned representative (571-203-2774).

Applicants respectfully request reconsideration of this application, entry of this amendment, withdrawal of all of the claim rejections, and timely allowance of the pending claims.

The Office Action contains a number of statements relating to the claims and the cited references. Applicants decline to subscribe to any statement in the Office Action, regardless of whether it might be specifically mentioned above. In particular, Applicants decline to subscribe to any characterization of the claims or the cited references.


Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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